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CONCORD, N.H.

July 1, 1955

Honorable Lane Dwinell, Governor
State of New Hampshire
Concord, New Hampshire

Dear Governor Dwinell:

You have inquired whether the regulation of the State Racing Commission No. 493, providing in part that the official state steward shall have his compensation as determined by the Commission paid by the licensee, is consistent with the provisions of Revised Laws, chapter 171, section 6. It is noted that section 6 requires that the compensation not only of the Commission, the expenses of the Commissioners, but also the compensation of assistants shall be charged to and paid out of the state's share of funds received under the provisions of the chapter.

It is my opinion that the official state steward is an assistant of and to the Commission. Section 12-b specifically provides that of the three stewards to supervise each meet one "... shall be the official steward of the state racing commission, and the remaining stewards shall be appointed by (the licensee) ..."

While the Commission is authorized by section 8 to make rules and regulations for the conduct and operation of all meets, it is elementary administrative law that the regulatory agency may not permit by regulation a practice or procedure enjoined by the statute conferring the regulatory power. The statute requires that compensation of assistants of and to the Commission shall be paid from the state's share of the take. A regulation providing that the official state steward shall be paid by the licensee is contrary to this statutory requirement.

That the Legislature had in mind that certain expenses could be chargeable to the licensee appears in the language of section 25 which provides that as to investigations into stock ownership by the Commission that expenses incurred by it in so doing shall be expenses of the licensee.

Respectfully,

Louis C. Wyman
Attorney General

LCW/aml